

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF WISCONSIN**

AMERITOX, LTD., and MARSHFIELD  
CLINIC,

Plaintiffs/Counterdefendants,

v.

MILLENNIUM LABORATORIES, INC.,

Defendant/Counterclaimant.

No. 3:13-cv-0832-WMC

**PLAINTIFFS' MOTION TO EXCLUDE  
THE EXPERT TESTIMONY OF RICHARD F. BERO, CPA, CVA  
PROFFERED BY MILLENNIUM HEALTH, LLC**

Plaintiffs Ameritox, Ltd. and Marshfield Clinic, Inc. ("Plaintiffs") respectfully move the Court to exclude from trial the expert opinions and expert testimony of Richard F. Bero, CPA, CVA ("Bero") proffered by Millennium Health, LLC ("Millennium"). As fully explained in the accompanying memorandum in support, Bero's opinions are unreliable and irrelevant. Bero should be excluded from proffering any testimony on non-infringing alternatives to Millennium's RADAR report with graphed results because he failed to meet the requirement of proving that a non-infringing alternative was available on the market during the time of the hypothetical negotiation. Moreover, Millennium admits no non-infringing alternatives exist.

Contrary to Federal Circuit law, Bero also takes a lump-sum annual royalty and then improperly converts it to a running royalty as the starting basis for determining a reasonable royalty under a hypothetical negotiation. Bero's opinions regarding a reasonable royalty should also be excluded as unreliable.

Finally, Ameritox has moved *in limine* on evidence related to commercial success. Should that motion be granted, Bero should also be precluded from providing any opinions on

commercial success. If this Court allows commercial success evidence, Bero's wholesale adoption of another expert's opinions regarding reasons why Millennium experienced growth are unreliable for his failure to conduct any independent investigation and should be excluded.

Accordingly, under the Federal Rules of Evidence and Federal Rules of Civil Procedure, Plaintiffs respectfully move this Court to exclude the expert opinions and expert testimony of Richard F. Bero, CPA, CVA.

Dated: March 6, 2015

By: /s/ David E. Jones

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 6th day of March, 2015, the foregoing **Plaintiffs' Motion to Exclude the Expert Testimony of Richard F. Bero, CPA, CVA Proffered by Millennium Health, LLC** was served upon counsel for Millennium Health, LLC via email to the counsel listed below:

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